

millions of dollars of investment to upgrade the service of a brokered television station. It would also be unfair to restrict the transferability of LMAs when the very same underlying benefits that were realized by the original contracting parties potentially exist under different entities who assume to the rights pursuant to a grandfathered television LMA.

27. Indeed, Malrite believes that the Commission must permit LMAs to be freely renewable and transferable because that clearly reflects the Congressional intent. A review of the legislative history underlying the 1996 Act demonstrates that Congress recognized the benefits that run with the implementation of LMAs and that future renewals of LMAs were specifically endorsed.¹² The Commission, having found LMAs to be in the public interest, should not now seek to curtail their effectiveness, especially in light of the statutory background.¹³

¹² See, House Report 104-204, 104th Cong. 1st Sess. 119-120.

¹³ There are various excerpts from floor statements in both chambers of Congress and in Conference Reports to demonstrate that Congress favors LMAs and recognizes the benefits which result to the public from their implementation. Several of these excerpts are set forth in the Comments simultaneously filed by the Local Station Operators Coalition in response to the Second Further Notice.

28. The Commission's proposed policy would limit grandfathered LMAs to the length of existing contracts, and Malrite believes that such a restriction is inconsistent with the intention of Congress which has stated that nothing within the 1996 Act should be construed to prohibit "the origination, continuation, or renewal of any television local marketing agreement that is in compliance with the regulations of the Commission." The Commission should permit the renewal and transfer of all grandfathered LMAs and allow for future LMAs regardless of any changes in its attribution or ownership rules.

Satellite Stations

29. Malrite supports the Commission's proposal in the Second Further Notice to continue exempting from broadcast ownership restrictions television satellite stations which transmit all or part of the programming of a commonly-owned parent station. The need for such regulation should be premised upon the satellite station's likely failure as a stand-alone facility and the general unwillingness of potential buyers to operate the station independently.

CONCLUSION

At the edge of the twenty-first century, the Commission has a chance to implement new rules regarding local television

ownership in order to provide television licensees with the ability to better compete in the highly competitive multi-channel programming environment.

There is a need to liberalize the television duopoly rule to allow UHF/UHF combinations within the same market. Moreover, given the continued disadvantage of UHF television stations, such duopolies should be allowable by rule and without resort to a waiver proceeding. In those circumstances where the ownership of a UHF television station and a VHF television station in the same market holds out the prospect of saving a failing UHF facility, the Commission should at the very least honor requests for waivers upon a proper showing that the public interest will be served without any significant diminishment of diversity. In the Commonwealth of Puerto Rico where terrain factors result in precarious stand-alone VHF enterprises, the Commission should provide for the liberal grant of waivers to the television ownership rule in order to permit VHF/VHF duopolies. Finally, the Commission should not abrogate the rights of contracting parties by limiting the ability to transfer, renew or extend grandfathered LMAs which have been negotiated in good faith and continue to serve valid public interest elements.

The modifications to the duopoly rule are needed in light of today's changing and competitive marketplace. As the television industry is poised to move into a new century, the Commission has an opportunity to assist the industry perhaps as never before. The Commission should adopt the points urged by Malrite in these comments.

Respectfully submitted,

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ATTACHMENT 1

The VHF Independent Advantage

Comparison of VHF independents to UHF independents

Black=VHF
Red=UHF

New York (1) Share
WNYW - 5 (Fox) 10
WPIX - 11 10
WWOR - 9 9
WNJU - 47 1

Los Angeles (2)
KTTV - 11 (Fox) 10
KTLA - 5 9
KCOP - 13 8
KCAL - 9 6
KMEX - 34 4
KVEA - 52 1

Chicago (3)
WGN - 9 12
WPWR - 50 8
WFLD - 32 (Fox) 6
WGBO - 66 3
WCIU - 26 1
WCFC - 38 1

San Francisco (5)
KTVU - 2 (Fox) 12
KBHK - 44 6
KOFY - 20 5
KICU - 36 2
KTSF - 26 1

Washington, D.C. (7)
WTTG - 5 (Fox) 14
WDCA - 20 6
WFTY - 50 1

Dallas (8) Share
KTVT - 11 8
KDAF - 33 (Fox) 7
KTXA - 21 5
KXTX - 39 3
KDFI - 27 3

Seattle (13)
KCPQ - 13 (Fox) 9
KSTW - 11 7
KVOS - 12 1
KTZZ - 22 1
KTBW - 20 1

Minneapolis (14)
KMSP - 9 12
KITN - 29 (Fox) 6
KLGT - 23 2

Miami (16)
WSVN - 7 (Fox) 12
WDZL - 39 7
WBFS - 33 6
WLTW - 23 6
WSCV - 51 4

St. Louis (18)
KPLR - 11 11
KDNL - 30 (Fox) 9
KNLC - 24 1

Phoenix (20)
KPHO - 5 7
KNXV - 15 (Fox) 8
KUTP - 45 5

San Diego (24) Share
XETV - 6 (Fox) 9
KUSI - 51 6
KTTY - 69 3

Indianapolis (26)
WTTV 4 10
WXIN - 59 (Fox) 9
WMCC - 23 3
WHMB - 40 1

Portland (27)
KPTV - 12 12
KPDX - 49 (Fox) 7

Salt Lake City (38)
KSTU - 13 (Fox) 12
KJZZ - 14 4

Albuquerque (50)
KASA - 2 (Fox) 7
KLUZ - 41 1

Honolulu (70)
KHNL - 13 (Fox) 9
KFVE - 5 4
KIKU - 20 1

Las Vegas (75)
KVVU - 5 (Fox) 14
KRLR - 21 4
KFBT - 33 2

Tucson (81)
KMSB - 11 (Fox) 7
KTTU - 18 3

The VHF Network Advantage

Comparison of VHF networks to UHF networks

Black=VHF
Red=UHF

<u>Market</u>	<u>Market Rank</u>	<u>Share</u>		
		<u>ABC</u>	<u>NBC</u>	<u>CBS</u>
San Diego	24	14	10	21
Hartford	25	16	10	23
Charlotte	29	21	8	27
Raleigh	32	24	6	28
W. Palm Beach	45	8	17	21
Louisville	49	24	17	22
Birmingham	51	24	18	11
Dayton	53	18	7	34
Jacksonville	54	9	16	33
Flint-Saginaw	60	19	23	14
Toledo	63	11	18	29
Springfield, MO	80	8	21	30
Jackson	90	12	21	29
Burlington	92	4	13	33
Tri-Cities, TN-VA	93	6	30	23
Savannah	102	9	13	30
Lansing	104	7	13	27
Montgomery	111	8	25	20
Augusta	112	21	8	26
Eugene	117	12	7	31
Columbus, GA	122	28	7	22
Terre Haute	143	4	19	36
Lubbock	149	12	18	27
Columbia-Jefferson City	151	9	16	36
Abilene	158	15	15	27
Hattiesburg	168	6	35	15
Rapid City	173	29	15	9

ATTACHMENT 2

The UHF Disadvantage

Networks that switch affiliation from VHF to UHF stations suffer dramatic ratings losses

9AM-12M HH share:

	Before switch (VHF)	After switch (UHF)	Percent Difference
Atlanta/CBS: from ch.5 to ch.46	22.3	9.0	-60%
Austin/CBS: from 7 to 42	30.7	15.7	-49
Birmingham/ABC: from 6 to 33	26.0	11.0	-58
Cleveland/CBS: from 8 to 19	19.7	9.3	-53
Detroit/CBS: from 2 to 62	19.2	7.7	-60
Flint/NBC: from 5 to 25	25.0	12.0	-52
Green Bay/NBC: from 11 to 26	18.7	13.0	-30
Greensboro/ABC: from 8 to 45	18.7	9.3	-50
Kansas City/NBC: from 4 to 41	16.3	10.7	-34
Memphis/ABC: from 13 to 24	15.3	8.0	-48
Milwaukee/CBS: from 6 to 58	21.7	6.0	-72
Mobile/NBC: from 10 to 15	19.0	11.0	-42
New Orleans/ABC: from 8 to 26	12.0	8.0	-33
Phoenix/ABC: from 3 to 15	16.7	11.0	-34
St. Louis/ABC: from 2 to 30	14.7	9.0	-39
Tampa Bay/ABC: from 10 to 28	15.7	9.3	-41

		Average:	-47%

source: Nielsen 1994, 1995 and 1996 M-Su 9AM-12M household share trends, Telerep Research. Top 75 markets with VHF to UHF affiliation switches. All switches occurred between 1994 and 1996.

ATTACHMENT 3

WOIO and WUAB
Headcount analysis

Department	<u>Actual combined</u>		additions/ deletions
	1994	1997	
Technical			
full-time	23	32	+9
part-time	6	3	-3
Programming			
full-time	11	8	-3
part-time	3	0	-3
Production			
full-time	17	47	+30
part-time	4	7	+3
News			
full-time	40	91	+51
part-time	3	4	+1
Sales			
full-time	37	37	0
part-time	1	0	-1
Promotion			
full-time	10	21	+11
part-time	0	1	+1
G&A			
full-time	15	16	+1
part-time	4	6	+2
Total			
full-time	153	252	+99
part-time	21	21	0

CERTIFICATE OF SERVICE

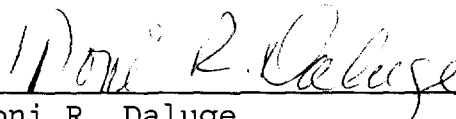
I, Toni R. Daluge, a secretary in the law firm of Kaye, Scholer, Fierman, Hays & Handler, LLP, do hereby certify that on this 7th day of February, 1997, a copy of the "Comments of Malrite Communications Group, Inc. in Response to Second Further Notice of Proposed Rulemaking" was sent via United States mail, postage-prepaid to the following:

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